Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

October Term, 1999

LEO FRIES,

Petitioner,

v.

THE WISCONSIN COURT OF APPEALS, DISTRICT 1, and RALPH ADAM FINE, CHARLES B. SCHUDSON, and PATRICIA S. CURLEY, elected judges of said Court of Appeals, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

LEO FRIES,
Petitioner-Pro Se
P.O. Box 275,
Wausau, WI 54402
(715) 362 6030

29pp

ISSUE PRESENTED

Did the United States District Court for the Eastern District of Wisconsin lack jurisdiction because of the Eleventh Amendment (Rooker-Feldman doctrine) to declare a prior Wisconsin judgment ***void ab initio*** entered by the *self-assigned* respondent judges, due to the *clear absence of any authority to act*, as demanded in the civil rights complaint filed by petitioner under 42 U.S.C. s. 1983?

PARTIES TO THE PROCEEDING

Pursuant to Rule 19, Larson Manufacturing Company *et. al.* were named in the complaint (*App. D*) as interested third party defendants in the judgment sought to be declared void. Larson did not respond to the issue on appeal.

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SUMMARY OF ARGUMENT

The complaint seeks relief pursuant section 1983 of the civil rights act to vacate a void state court judgment decided and entered by the *self appointed* respondent judges who acted without order of assignment in *clear absence of any authority*. Only the Wisconsin Supreme Court Chief Justice could appoint them to act in a district III case under Wis. Stats. 757.19(5) and 751.03.

I. The Eleventh Amendment (Rooker Feldman *doctrine*) does not a bar a federal lawsuit to declare a Wisconsin judgment *void ab initio* entered in "clear absence of any authority" by the three *self appointed* respondent judges sitting in Milwaukee County as a Wisconsin of Court of Appeals, District I panel for a District III panel, .

II. THE WISCONSIN JUDGMENT ENTERED BY RESPONDENTS IS VOID.

A. Judge Eich acted *in clear absence of any authority* to substitute or assign a District I *panel* sitting in Milwaukee County, to act as the District III court panel which sits in Marathon County, Wisconsin.

B. There was no order appointing the three respondent judges.

C. Wis. Stats 751.03 mandates that the Chief Justice of the Wisconsin Supreme Court appoint a substitute court of appeals judge upon notice of disqualification. Wis. Stats 757.19(5) and 751.03

D. The Judicial panel substitution *disenfranchised the rights* of voters in district III.

E. The *self appointed* three respondent judges acted in an individual capacity, under color of state law, as a Wisconsin Court of Appeals, District I *panel* sitting in Milwaukee and rendered a void decision for the District III appeals court which sits in Wausau, Wisconsin. Wis. Stats 752.13 and 752.17.

III. PETITIONER IS ENTITLED RELIEF UNDER SECTION 1983.

Respondents acted in a non-judicial capacity to deprive him of his constitutional rights of due process and equal protection of the laws under the fourteenth amendment.

Conclusion: The petition for a writ of certiorari should be granted.

Appendix Attached to Petition

Appendix A. Court of Appeals Decision and Order of January 3, 2000

Appendix B. Judgment entered January 3, 2000.

Appendix C. Justice Stevens 3/9/00 Order extending time to file for Writ.

Appendix D. Complaint (pertinent parts)

Appendix E. Exhibit D attached to Complaint (Wisconsin Court of Appeals III, *Order Substituting Panel.*)

Appendix F. Exhibit F, Wisconsin Attorney General disclosure that no Order of judicial assignment of defendant judges ever existed.

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Related Wis. Statutes in pertinent part set out in Appendix G

INTRODUCTION

Petitioner Leo Fries respectfully request that a writ of certiorari be issued to review the order, decision and judgment of January 3, 2000 entered by the Seventh Circuit Court of Appeals affirming the district court decision dismissing the complaint for lack of jurisdiction under the eleventh amendment.

OPINION BELOW

On January 3, 2000 the Seventh Circuit Court of Appeals handed down the unpublished decision and order *(App. A)* in case No. 99-2915 on Appeal from the District Court judgment entered July 15, 1999 in the Eastern District of Wisconsin, No. 99 C 536, affirming the State of Wisconsin, defendants-appellees, motion to dismiss the complaint for lack of jurisdiction under the Eleventh Amendment to declare a judgment of the Wisconsin Court of Appeals by said three respondent judges, *void ab initio*.

The decision does not address the fact that the state judgment is void or petitioner's section 1983 civil rights to have it declared void.

JURISDICTIONAL STATEMENT

The Supreme Court jurisdiction is invoked under 28 U.S.C. s. 1254(1). Justice Stevens timely extended the time to file this petition for writ of certiorari to June 1, 2000 (Appendix. C) on the court of appeals judgment entered January 3, 2000. The seventh circuit court of appeals had jurisdiction under 28 U.S.C. s. 1291 to hear the lower court appeal. The district court had jurisdiction under 42 U.S.C. s.1983 and 28 U.S.C. 1331 and 28 U.S.C. s. 1343 (3) and (4).

CONSTITUTIONAL AND STATUTORY LAWS INVOLVED

The eleventh amendment provides in relevant part:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The fourteenth amendment provides in relevant part:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person equal protection of the laws.

42 U.S.C. s. 1983. Civil action for deprivation of rights

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution or laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated...

Relevant Wisconsin Statutes in pertinent part:

757.19 Disqualification of judge

(1) In this section "judge" includes the supreme court justices, court of appeals judges, circuit court judges and municipal judges.

(6) When a judge is disqualified, the judge shall file in writing the reasons and the assignment of another judge shall be requested under s. 751.03.

751.03 Assignment of judges

(1) The chief justice of the supreme court may assign any active supreme court justice, court of appeals judge or circuit judge to serve temporarily as a a judge of the court of appeals or any circuit court to aid in the proper disposition of business in that court.

Other relevant Wisconsin Statutes appear in appendix G.

The challenged Panel Order (App. E)

"ORDER SUBSTITUTING PANEL"

"It appearing that a panel should be assigned to act in the above-entitled matter because of the necessity of the disqualification of the District III panel,

IT IS ORDERED that a District I panel be assigned to act in the above matter in district III, Marathon County.
Dated September 3, 1997.

/s/ William Eich
William Eich, Chief Judge"

Also pertinent is the disclosure herein by the attorney general that no other order exists specifically appointing judges Fine, Schudson, and Curley to decide said appeal. [App. F] and the disenfranchisement of voter rights in district III. The voters of District I elect four judges from their district. The voters of District III elect three judges to sit in district III from district III. Wis. Stats. 752.03, 752.11,752.13 and 752.17.

STATEMENT OF THE CASE AND FACTS
Procedural History

Petitioner Fries filed his complaint [App. D] seeking declaratory relief in the district court for the eastern district of Wisconsin under s. 1983 of the Civil Rights Act to have the Wisconsin Court of Appeals judgment and decision in appeal 97-1956 declared ***void ab initio***. Fries, a resident of district III, appealed a Marathon County circuit court summary judgment dismissal of his action to the Wisconsin Court of Appeals, District III which sits in Wausau, Wisconsin. Wis. Stats 752.17, 752.21

The dismissed complaint sought to reinstate a default judgment entered against Larson Manufacturing Company, Inc., for royalties, it being one of four Larson companies each owned by Dale Larson. Fries alleged that Larson filed false documents with the secretary of state (DFI) [App D, par.13] and gave false deposition testimony and obtained the vacation of the default by fraud.

On September 3, 1997 Judge Eich, as chief administrative judge of the court of appeals, IOP I, "ORDERED that a District I panel be assigned to act in the above matter in district III, Marathon County." Judge Eich *determined* that the district III panel was disqualified. [Exhibit D of the complaint, *App. D*] There is no order assigning Judges Fine, Schudson, and Curley to the case which the attorney general admits.

The pertinent complaint allegations admitted herein are:

> 9. On May 18, 1998 judges Fine, Schudson, and Curry (sic), sitting at Milwaukee as a district I panel, decided the appeal according to schedule of district I cases and internal procedures, after a long delay and contrary to district III scheduling affirmed the lower court decision and remanded with directions for costs per Exhibit B.
>
> 11. The conduct of said judges disenfranchised voter rights and the rights of the residents of District III including Fries to have his appeal heard and decided at Wausau. The district I panel of judges had no authority or power to act as they did sitting in Milwaukee County under stats. 752.13 or 752.17. The Wisconsin Supreme Court also was without power to deny a review of a decision void *ab initio*.

Par. 12 alleges that said three judges acted under color of law to civil rights under s. 1983 and the fourteenth amendment and demanding judgment "declaring said decisions and related judgment thereon void and unenforceable..."

The attorney general filed a motion to dismiss alleging three defenses:

> (1) That any claim for damages is barred by judicial immunity and by the Eleventh Amendment to the United States Constitution.
>
> (2) That the defendants are not "persons" within the meaning of 42 U.S.C. s. 1983.
>
> (4) That the district court lacks jurisdiction to review the decisions of the the Court of Appeals and the Wisconsin Supreme Court under the Rooker-Feldman doctrine.

On June 12, 1999 Fries demanded a copy of the specific order appointing judges Fine, Schudson, and Curley to act as appellate judges in appeal 97-1956. In response to his demand, the Wisconsin Attorney General advised there was no other order except Judge Eich's order substituting panel I for panel III. [App. F]

Standard of Review (de novo)

The complaint is reviewed de novo. On a motion to dismiss well pled facts are accepted as true; the motion to dismiss should not be granted if under any legal circumstance the plaintiff is entitled to any relief. *Leatherman v. Tarrant County Nar. Intel. Coordin. Unit*, 507 U.S. 163 at 168 (1993). A motion to amend should be freely given. All *inferences* from the facts of a "notice pleading" complaint are construed in favor of the plaintiff on a motion to dismiss and no legal theory or citation need be alleged under Rule 8(a) of F.R.C.P. *Wudtke v. Duval*, 128 F. 3d 1057, at 1061 (7th Cir. 1997). The complaint gave notice that the "judicial assignment" was *void*.

REASONS FOR GRANTING WRIT

I. The eleventh amendment (Rooker Feldman *doctrine*) does not a bar a federal lawsuit to declare the Wisconsin judgment, entered in "clear absence of any authority" by the respondents, *void ab initio*.

Under both federal and Wisconsin law a void judgment may be expunged by a court at any time. *Neyland v. Vorwald*, (Wis. 1985) 368 N.W. 2d 648, at 655, cites *In Kohler Co. v. ILHR*, (Wis. 1977) 259 N.W.2d. 695, 81 Wis. 2d 11, at 25,

> "When a court or other judicial body acts in excess of its jurisdiction its orders or judgments are void and may be challenged at any time.
>
> "A void judgment cannot be validated by consent, ratification, waiver, or estoppel."

Neyland further cites *Wright and Miller*, Federal Practice and Procedure, sec. 2862, at 655 that "There is no time limit on an attack on a judgment as void."

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) addressed the claim of a void judgment based on the argument that one of the judges on the Indiana Supreme Court had an interest in the case which disqualified him. The Supreme Court thus acknowledged that the eleventh amendment did not apply to void judgments but held that the argument had no merit in the *Rooker* case. ***Also see*** *Cooper v. Newell*, 173 U.S. 555 (1898)

The *Rooker Feldman* doctrine as enunciated in *Gash Associates v. Village of Rosemont, Ill.* 995 F.2d 726, 727 (7th Cir. 1993) is not applicable to the Fries case for other reasons. Fries is not seeking a review but a declaration vacating the judgment as being void. The fact that the decision was filed as a district III decision just exacerbates its invalidity. The eleventh amendment does not bar to a s. 1983 suit alleging a void judgment entered by state appellate judges acting in clear absence of any authority under color of state law.

II. THE WISCONSIN JUDGMENT ENTERED BY RESPONDENTS IS VOID.

A. Judge Eich acted *in clear absence of any authority* to substitute or assign a District I *panel* sitting in Milwaukee County, to act as the District III court panel which sits in Marathon County, Wisconsin.

B. There was no order appointing the three respondent judges.

C. Wis. Stats 751.03 mandates that the Chief Justice of the Wisconsin Supreme Court appoint a substitute court of appeals judge upon notice of disqualification. Wis. Stats 757.19(5) and 751.03

D. The Judicial panel substitution *disenfranchised the rights* of voters in district III.

E. The *self appointed* three respondent judges acted in an individual capacity, under color of state law, as a Wisconsin Court of Appeals, District I *panel* sitting in Milwaukee and rendered a void decision for the District III appeals court which sits in Wausau, Wisconsin. Wis. Stats 752.13, 752.17, App. G.

Defendants Fine, Schudson and Curley, being three of the four elected appellate judges sitting in district I per ss 752.03(4) & 752.13 Wis. Stats., were sued in their *individual capacity* because they acted without jurisdiction in Wisconsin case no. 97-1956, see complaint. *App. D* There was no order appointing defendants, Fine, Schudson or Curley to decide the appeal. *App. F.* Wis. Stats. 751.03(1) provides that the Chief Justice of the Wisconsin Supreme Court shall appoint a substitute judge when an appeals court judge is "disqualified." Sec. 757.19(5) provides that when a judge is disqualified, "...the assignment of another judge "shall be requested under s. 751.03." Defendants proceeded *in clear absence of any authority*, as a district I court, sitting in Milwaukee County, under the rules of procedure and case load assignment of said District I court. Their decision violated Fries' sec. 1983 civil rights and his 14th Amendment rights of due process and equal protection of the laws. There is no authority for panel disqualification or for panel substitution.

The defendant judges sitting in Milwaukee County as a district I panel had no jurisdiction over the subject matter before them involving a district III case. The court in *Stump v. Sparkman*, 435 U.S. at 356. at footnote 6 quotes *Bradley v. Fisher* 13 Wall at 351-2 (1872): ". . . Where there is clearly no jurisdiction over the subject matter any authority exercised is a usurped authority, . . ." The jurisdiction of the district III court is found in Wis. Stats. s. 752.17, not s.752.13.

The issue is enforced by the argument cited from *Bradley* at footnote 7 in *Stump* at 357, to wit:

> "... if a probate judge, with jurisdiction only over wills and estates, should try a criminal case, he would be acting in clear absence of jurisdiction, and would not be immune from liability for his action;..."

The appeals court decision failed to recognize that the defenses of "judicial immunity" and "The Eleventh Amendment" are not applicable where Fries sues the Court of Appeals, District I, and the individual respondents for acting without authority and not in their official capacities. Neither the District I appeals court nor the three named judges were acting in any official capacity sitting in Milwaukee in the district III case. For the above reasons the respondents are also "persons" who can be sued for relief under s. 1983 for usurping their authority and federal substantive rights by depriving him of his property without due process and equal protection of the laws under the fourteenth amendment.

III. Section 1983 relief is proper as Respondents acted in a non-judicial capacity.

District I consists of four judges. Wis. Stats. 752.13, 752.03(4) There was no authority for the Chief Administrative Judge of the Court Appeals to substitute a District I panel for a District III panel. Respondents decided which three of the four judges in district I were assigned to sit in district III. Judicial immunity is not a defense available to self appointed judges for due process deprivations under the fourteenth amendment. see *Forrester v White*, 484 U.S. 219, 229 (1987). The judges had no authority to sit and decide the appeal in Milwaukee even if they had been appointed by the Chief Justice. The District III court sits in Wausau under its own case assignment disposition. 752.17, 752.31 (1) Wis. stats., App. G.

There is reason to doubt the constitutional propriety and fairness of the appellate procedure in the judges assigning themselves, without authority, to render a decision against Fries as a district I panel. *Montana v.United States*, 440 U.S. 147, at 164, n.11. Also see *McDonald v. Mabee*, 243 U.S. 90,92 (1917) for the rule that a money judgment (costs and fees against Fries) obtained without jurisdiction is invalid or void.

The decisions of the court of appeals and denial of review attached to the amended complaint imposed costs and fees which became a judgment lien against plaintiff's property. The usurpation

of power clearly resulted in unlawful affirmance of the summary judgment, a taking of his property under color of law without due process of law and denial of equal protection of the laws protected by the Fourteenth Amendment. see *Pennhurst State School and Hospital v. Halderman*, case exception, 465 U.S. 100 (1984) at 102 and *Montana v. United States*, 440 U.S. at 164, n.11. Oral argument was denied.

Voter Rights Disenfranchisement

The respondents' conduct disenfranchised the rights of the district III voters and vitiated the legislative enactment Wis. Stats. 752.04 of election by district. The right of voter privileges and results was negated. Respondents ignored the admonition of the Wisconsin Supreme Court in *State v. Holmes*, 106 Wis 2d. 31 at 43-44 (1982):

> ". . .Both the judiciary and the legislature are empowered to ensure not only the fairness and integrity of the courts be maintained but also that the operation of the courts be conducted in such a manner as will avoid even the suspicion of unfairness."

There is reason to doubt the fairness, quality, and secretive nature of the procedures involved in the panel assignments and their self assignment. Wis. Stats. 757.19(6) emphasizes the seriousness of any alleged violation of the disqualification process by referral to the judicial commission, in addition to other remedies. See the *fairness* protection enunciated in *Montana v. United States*, 440 U.S. 147, at 164, n.11,

CONCLUSION

The eleventh amendment does not bar s. 1983 litigation to have the district court declare the state court decision void. There is no immunity defense available to the three state judges for acting in clear absence of any authority in their individual capacity.

Fries requested the following relief in the lower courts which was passed over by the order up-holding the jurisdictional bar of the Rooker-Feldman doctrine and the eleventh amendment, to wit: (1) that the judgment of the Wisconsin Court of Appeals judgment entered in appeal 97-1596 be declared null and void and the related decisions be ordered vacated, (2) for an order permitting the plaintiff to file an amended complaint for damages against the defendants, (3) for an Order reversing the district court judgment on appeal with costs to Fries, and, (4) for such relief as is proper and just under the law.

The writ should be granted.

Respectfully submitted,

Leo Fries, Petitioner-Pro Se
P.O. Box 275,
Wausau, WI 54402
(715) 362 6030

3 copies served on respondents' counsel:
David C. Rice
Asst. Wis. Attorney General
PO Box 7857
Madison, WI 53707

APPENDIX

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued December 15, 1999
Decided January 3, 2000

Before

Hon. Jesse E. Eschbach, *Circuit Judge*
Hon. Michael S. Kanne, *Circuit Judge*
Hon. Terence T. Evans, *Circuit Judge*

No. 99-2915

LEO FRIES,
Plaintiff-Appellant,

v

WISCONSIN COURT OF APPEALS, DISTRICT I, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 99-C-0536

Lynn Adelman, *Judge.*

ORDER

In 1993 Leo Fries sued his former employer, Larson Manufacturing Company (Larson), in Wisconsin state court, seeking compensation for Larson's alleged use of a storm door design Fries claims to have created. The state trial court granted summary judgment in favor of Larson and imposed sanctions against Fries and his lawyer, Larry Rader, prohibiting them from filing further actions against Larson without leave of court. Fries then appealed to District III of the Wisconsin Court of Appeals. The chief judge of that court, having determined that the District III panel assigned to Fries's

No. 99-2915

case should be disqualified, assigned instead a panel of District I judges to Fries's case. The panel decided Fries's case without oral argument and affirmed the trial court's grant of summary judgment. The panel also decided that Fries's appeal was frivolous and remanded the case to the circuit court to assess costs and fees against Fries and Rader. The Wisconsin Supreme Court denied Fries's petition for review.

Fries then filed a pro se complaint in federal district court, alleging under 42 U.S.C. § 1983 that the three judges who decided his appeal deprived him of his right to have it heard by District III judges and violated his right to equal protection by favoring defense counsel's law firm in his state court case. Fries requested that the state court judgments be declared void and that he be awarded costs and attorney's fees. The district court granted the defendants' motion to dismiss, in part because it concluded that Fries's suit was barred by the Rooker-Feldman doctrine. Now assisted by counsel, Fries appeals.

We agree with the district court that it lacked jurisdiction over Fries's claims based on the Rooker-Feldman doctrine, which prohibits a lower federal court's review of state court decisions and all claims inextricably intertwined with those decisions. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), see also Levin v. Attorney Registration and Disciplinary Comm'n of the Supreme Court of Ill., 74 F.3d 763, 766 (7th Cir. 1995). Fries contests Rooker-Feldman's applicability, arguing that the doctrine concerns only "review" and not a request that a judgment like his be declared void. District courts, however, may not consider claims that are dependent on state court judgments or claims in which granting relief would effectively void a state court ruling. See id. Fries's complaint asked the district court to do both. First, Fries alleged a cause of action predicated on the state court's judgment, claiming that the appellate court's opinion "circumvented the law." Second, Fries explicitly requested that the district court void the state court decisions, which it cannot do. See Downs v. Westphal 78 F.3d 1252, 1256 (7th Cir. 1996). Thus, the district court properly dismissed Fries's complaint for lack of jurisdiction. See Levin, 74 F.3d at 766. Accordingly, the judgment of the district court is AFFIRMED.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT - WITH ORAL ARGUMENT

Date: January 3, 2000

BEFORE: Honorable JESSE E. ESCHBACH, Circuit Judge
Honorable MICHAEL S. KANNE, Circuit Judge
Honorable TERENCE T. EVANS, Circuit Judge

No. 99-2915

LEO FRIES,
Plaintiff - Appellant

v.

WISCONSIN COURT OF APPEALS, District 1, RALPH A. FINE, CHARLES B. SCHUDSON, et al.,
Defendants - Appellees

Appeal from the United States District Court for the
Eastern District of Wisconsin
No. 99 C 536, Lynn Adelman, Judge

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

(1061-110393)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

March 9, 2000

Mr. Leo Fries
P0 Box 275
Wausau, WI 54402

Re: Leo Fries
v. Wisconsin Court of Appeals,
District I, et al.
Application No. 99A728

Dear Mr. Fries:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on March 9, 2000, extended the time to and including June 1, 2000.

This letter has been sent to those designated on the attached notification list.

Sincerely,
WILLIAM K. SUTER, Clerk
By /s/ Clayton R. Higgins, Jr.
Clayton R. Higgins, Jr.
Assistant Clerk

United States District Court for the Eastern District of Wisconsin

Leo Fries,

Plaintiff,

vs

The Wisconsin Court of Appeals, District I, and Ralph Adam Fine, Charles B. Schudson, and Patricia S. Curley, elected judges of said Court of Appeals,

Defendants,

and, 99-C-0536

Larson Manufacturing Company of Iowa, Inc., a/k/a LARSON MANUFACTURING COMPANY, a South Dakota Corporation, O. Dale Larson, Larson Manufacturing Company, Inc., a South Dakota Corporation, and, Larson Manufacturing Company of South Dakota, Inc., formerly incorporated as, and now also know as, Larson Manufacturing Company

Interested Third Party Defendants,

AS and for a complaint the plaintiff seeks relief under 42 USCA sections 1981, 1982, 1983 et al as applicable and thus alleges as follows:

1. The plaintiff resides at N11570 Hilts Lake Road, Lincoln County, Rhinelander, WI 54501. Plaintiff, a former naval pilot, was a former employee of *"Larson Manufacturing Company."*

2. The defendant Wisconsin Court of Appeals for District I is located at Milwaukee, Wisconsin.

3. The defendants Ralph Adam Fine, Charles B. Schudson, and Patricia S. Curley are the elected sitting judges of said Court in Milwaukee per 752.13 Wis. Stats.

4. The Wisconsin Supreme Court is the highest court of last resort in Wisconsin and is located at Madison, WI.

5. That the third party defendants were the named defendants in a civil action filed in Marathon County Circuit Court as case number 96 CV 682 entitled Fries v. Larson Manufacturing Company of Iowa, Inc. et al.

6. Fries filed an appeal from an adverse summary judgment dismissing his complaint to the the Court of Appeals for district III which sits in Wausau pursuant to 752.17 Wis, Stats., Case Appeal No. 97-1956.

7. Pursuant to a request of the judges in the third district court of appeals, judges Fine, Shuldson, and Curry were assigned to hear the appeal in District III. Exhibit D.

8. Plaintiff request for oral argument at Wausau was denied per Exhibit A, "Notice of Submission on Briefs."

9. On May 18, 1998 judges Fine, Shudson and Curry, sitting at Milwaukee as a district I panel, decided the appeal according to schedule of district I cases and internal procedures, after a long delay and contrary to district III scheduling) affirmed the lower court decision and remanded with directions for costs per Exhibit B.

10. On July 24, 1998 The Wisconsin Supreme Court denied a timely filed Petition for Review by Fries with costs pursuant (Exhibit C) to which the Court of Appeals entered its Remittitur dated July 28, 1998 pursuant to which the lower court entered judgments for costs on August 10, 1998.

11. The conduct of the said judges disenfranchised voter rights and the right of the residents of District III including Fries to have his appeal heard and decided at Wausau. The district I panel of judges had no authority or power to act as they did sitting in Milwaukee Couinty under stats. 752.13 or 752.17. The Wisconsin Supreme Court was also without power to deny a review of a decision void *ab initio*.

Jurisdictional statement

12. Said judges Fine, Shudson and Curry acted under *color of law* in violation of Fries' civil rights for which Fries is entitled to relief under 42 USCA sections 1981, 1982 and 1983 et al. and the 14th amendment.

Count One: Declaratory relief vacating void judgment and "disenfranchisement of voter rights."

13. Realleges 1 - 12 above.

Wherefore, Fries demands judgment declaring said decisions and the related judgment thereon void and unenforceable with directions to the respective courts to vacate judgments entered thereon, together with allowable costs and attorney fees.

Count Two: Violation of Constitutional right of Fries to "equal protection under the law."

14. Realleges 1-12 above.

15. Based upon reasonable inferences and the facts alleged, the said panel of judges act to placate and ignore the conflict of interest of Judge Kinney allowing the case to proceed with the defendants using his former attorney and friend of Judge Kinney, Attorney George Richards, of the Patterson law firm identified in Exhibit A.

16. The unpublished opinion of the panel circumvented the law with regard to the separate Larson Company corporations and the false and misleading testimony given under oath in depositions as alleged in the complaint and the briefs of the plaintiff to said appeal courts. The panel knew or had reason to know that the statements at page 4 of their opinion citing the trial court ruling were not true. There was a legal duty for the third party defendants to respond truthfully under oath at the deposition and in their pleadings filed with the court and with the Wisconsin Department of Financial Institutions. The records of the DFI and the depositions cited in the briefs were ignored (stonewalled) by the said appeals court judges and the Wisconsin Supreme Court justices.

17. The defendants attorneys in the Patterson law firm have had a storied association with the Board of Attorneys Professional Responsibility for many years, and Plaintiff infers and believes the conduct above described is another form of "favoritism" which recently surfaced in the media reports regarding the board operations. Fries was denied equal protection under the law by the panel which failed to address the argument in his brief and denied him oral argument.

Wherefore, as a second or alternative course of relief, Fries asks this federal court to declare the decisions of the Court of Appeals, the Wisconsin Supreme Court denial of review and the related judgments subsequently entered pursuant thereto null and void as having been corruptly obtained by "favoritism," or for such relief as is just, to protect his constitutional right of equal protection under the law.

May 14, 1999

/s/ Leo Fries Plaintiff
Leo Fries Plaintiff
PO Box 275
Wausau, WI 54402
715-362-6030

Case No. 97-1956

COURT OF APPEALS

State of Wisconsin **District III** **Marathon County**

Leo Fries,

Plaintiff-Appellant,

v.

FILED
Sep - 3 1997
MARILYN L. GRAVES
CLERK OF COURT OF APPEALS
OF WISCONSIN

Larson Manufacturing Company of Iowa, Inc., A/K/A Larson Manufacturing Company, A South Dakota Corporation, O. Dale Larson, Larson Manufacturing Company, Inc., A South Dakota Corporation, John P. Runde, and Terwilliger, Wakeen, Piehler & Conway, S.C., A Wisconsin Service Corporation, and Larson Manufacturing Company of South Dakota, Inc., Formerly Incorporated as, and now known as Larson Manufacturing Company,

Defendants-Respondents

ORDER SUBSTITUTING PANEL

It appearing that a panel should be assigned to act in the above - entitled matter because of the necessity of the disqualification of the District III panel,

IT IS ORDERED that a District I panel be assigned to act in the above-entitled matter in District III, Marathon County.

Dated: September 3, 1997.

/s/ William Eich, Chief Judge
William Eich, Chief Judge

FRIES
EXHIBIT D

(True copy attached to complaint, R-1.)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 18, 1999

Leo Fries
P.O. Box 275
Wausau, Wisconsin 54402

Re: Fries v. Wisconsin Court of Appeals, District I, et al.
Case No. 99-C-0536

Dear Mr. Fries:

In response to your faxed letter of June 14, 1999, please be advised that the only order substituting a District I panel is attached to your brief as Exhibit D. There is no order specifically assigning Judges Fine, Schudson, and Curley.

I do not believe that the motion to dismiss of the Court of Appeals, District I, or the supporting brief, is misleading or confusing in this regard. Please let me know if you require any additional information.

Sincerely,

/s/ David C. Rice

David C. Rice
Assistant Attorney General
State Bar No. 1014323

Relevant Wisconsin Statutes:

757.19 Disqualification of judge

(1) In this section "judge" includes the supreme court justices, court of appeals judges, circuit court judges and municipal judges.

(5) When a judge is disqualified, the judge shall file in writing the reasons and the assignment of another judge shall be requested under s. 751.03.

Wisconsin Court of Appeals Internal Operating Procedures

IOP
I. Chief Judge
The chief judge is responsible for the administration of the court.

752.31 Disposition of cases

(1) Except as otherwise provided in this section, the court of appeals shall sit in panels of 3 judges to dispose of cases on their merits.

751.03 Assignment of judges

(1) The chief justice of the supreme court may assign any active supreme court justice, court of appeals judge or circuit judge to serve temporarily as a a judge of the court of appeals or any circuit court to aid in the proper disposition of business in that court.

752.21 Venue

A judgment or order appealed to the court shall be heard in the court of appeals district which contains the court from which the judgment or order is appealed.

752.17 District III

The court chambers for the court of appeals in district III are located in Wausau. The court shall also sit in Eau Claire, Superior and Green Bay.

752.13 District I

The court chambers for the court of appeals in district I are located in Milwaukee.